decrease the negotiability of this commercial paper. But such an increase should also place a not inconsiderable obstacle in the way of misappropriation of funds by an agent. And the limits of constructive notice, laid down in the cases given above, are in keeping with the spirit of the law merchant. A negotiable instrument is said to be "a courier without luggage, whose countenance is his passport." If that countenance be good, let him pass. But if that countenance be evil or suggestive of evil, his passport is evidently of no value. Therefore, it is believed that the best policy of the State would be served by observing the doctrine of constructive notice in transactions with negotiable paper.

THE RIGHT OF AN INFANT TO SUE ITS PARENT FOR MAINTENANCE.—The English courts have consistently held that the duty of a father to maintain his infant child is a moral duty only, which the courts will not undertake to enforce. This doctrine is so far extended that a third person, who out of kindness of heart furnishes the neglected child with necessaries, cannot recover their value from the father, in the absence of an express or an implied promise on the part of the father to pay for them. And the moral obligation imposed on the parent is not, of itself, strong enough to imply such a promise.[1] This view has been adopted and followed by a few American courts,[2] but the vast majority of them and practically all of the American text-books [3] hold that the duty the parent owes his infant child is not merely a moral, but a legal one as well, and that it will be enforced, even though the infant has property of its own, sufficient for its support.[4]

While the existence of this legal duty is thus admitted, there is a wide diversity of opinion as to the method of enforcing it. As a general proposition, an infant cannot sue its parent to redress a purely personal wrong, and the text-books have surmised, therefore, that neither can an infant sue its parent for maintenance.[5] The profession also seem to have come to the conclusion that such a suit is not maintainable, as is evidenced by the fact that there are very few reported cases directly bearing on the question. In the Missouri case of *Huke* v. *Huke* [6] it was held that a bill filed by an infant against her father, petitioning the court for a decree of maintenance, was demurrable on the ground that an equity court has no jurisdiction to try such suits. But it

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[1] Shelton *v.* Springett, 11 C. B. 452.

[2] Kelly *v.* Davis, 49 N. H. 176, 6 Am. Rep. 499; Holt *v.* Baldwin, 46 Mo. 265, 2 Am. Rep. 515.

[3] 20 R. C. L. 622; 29 Cyc. 1606.

[4] Stanton *v.* Willson's Ex'rs, 3 Day (Conn.) 37, 3 Am. Dec. 255; Evans *v.* Pearce, 15 Gratt. (Va.) 513, 78 Am. Dec. 635; Porter *v.* Powell, 79 Iowa 151, 44 N. W. 295, 7 L. R. A. 176.

[5] 29 Cyc. 1663.

[6] 44 Mo. App. 308.

must be borne in mind that Missouri is one of the few States, which still uphold the view that the parent's duty to support his infant child is a moral duty only.[7] And, in following the reasoning of the case, it will be seen that the decision hinges on that one point,—namely, that since the parent's duty to support the infant child is a moral duty only, it cannot be enforced by any secular court.

On the other hand, the California case of *Paxton* v. *Paxton*[8] reached a directly opposite conclusion. In that case, suit was brought by an adult child, who was blind and unable to earn his own livelihood. The principle is precisely the same, since under a California statute the parent owes identically the same duty in this respect to his invalid adult child that he owes to his infant child. The court, recognizing the humane principle that a parent is under a legal as well as a moral obligation to support his children, rightly held that the action was maintainable.

In the recent Mississippi case of *Rawlings* v. *Rawlings*[9] the court held that a bill filed by an infant against its parent for maintenance was demurrable. The court admitted that the parent owed a legal duty to the child for support, yet held that such duty was not enforceable directly by the infant. It based its decision mainly on the authority of *Huke* v. *Huke, supra,* which case, as pointed out by Judge Ethridge in his dissenting opinion[10]

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[7] Holt *v.* Baldwin, *supra.* Quoting from Judge Currier's opinion: "The moral obligation of a father to support his child does not make him legally liable to pay his child's debts; and to charge a father on his son's contracts, the same circumstances must be shown as to charge an uncle, a brother, or any third person."

[8] 150 Cal. 667, 89 Pac. 1083. To quote from Judge McFarland's opinion: "As the duty runs to the children, the latter are the persons to whom the right imposed by the duty accrues, and they are the proper parties to an action to enforce such right and compel the performance of such duty."

[9] 83 South. 146.

[10] "I proceed now to a consideration of the authorities cited in the majority opinion, the principal of which is Huke *v.* Huke, 44 Mo. App. 308. The basis of this decision, and the only theory upon which it can be upheld on legal reasoning, is that the duty of the father to support his child is a mere moral obligation, as distinguished from a legal obligation. The court said (44 Mo. App. 312): 'By the common law of England a father is not bound to support his infant child, in the sense that the obligation has any legal sanction; no action can be maintained against him without the aid of statute, to compel him to discharge this natural duty. By that law a father is not liable, as upon an implied contract, to a stranger who furnishes necessaries for the support of his infant child.' If this statement were true, and if there were no legal obligation on the part of the father to support the child, then the conclusion of the majority would be sound. As is shown above, the overwhelming weight of authority is against this announcement, and as the majority opinion confesses that there is a legal obligation on the part of the father to support the child, this authority does not sustain the reasoning of that opinion. * * * It will be seen from a careful reading of this opinion (Huke *v.* Huke) that the decision would have been otherwise, had the court recognized the duty of a father as a legal duty, instead of a moral duty."

in *Rawlings* v. *Rawlings,* should possess no weight in jurisdictions recognizing the legal obligation of the parent to support the child.

It is difficult to understand how any civilized jurisprudence can recognize the existence of a legal right and still provide no remedy for its violation. Those denying the jurisdiction of equity contend, (1) that the infant has an adequate and complete remedy at law, and (2) that to permit suits of this character would contravene public policy.[11]

What is the infant's remedy at law? First, an infant of the age of discretion, who has been left destitute by his parent, has an implied authority as his parent's agent to procure necessaries for himself.[12] But a parent is not bound by the contracts of his child, even for necessaries, so long as the child continues under his direction and control. In such case it is left to the discretion of the parent to determine what is necessary for the child's maintenance, unless there is a clear omission of parental duty.[13] Hence, one, who sells necessaries to an infant intending to hold the parent liable therefor, does so at the risk of being able to show either that such purchases have been expressly authorized by the parent, or that the facts and circumstances surrounding the purchases raise an implied authority to make them.[14] How many business people will extend credit to an infant under such circumstances? Could this by any legal fiction be termed an adequate remedy? Second, there are statutes in most States making the father criminally liable for abandonment of his infant child.[15] But the majority of these statutes simply make it a misdemeanor punishable by fine or imprisonment, and if the parent remains obstinate, no material advantage is gained. Furthermore, it has been held that abandonment is not a continuing offense and that therefore there can be but one conviction for the same abandon-

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[11] See Rawlings *v.* Rawlings, *supra.*

[12] Stanton *v.* Willson's Ex'rs, *supra;* Porter *v.* Powell, *supra.*

[13] Owen *v.* White, 5 Port. (Ala.) 435, 30 Am. Dec. 572.

[14] Brown *v.* Deloach, 28 Ga. 486; Hunt *v.* Thompson, 4 Ill. 179, 36 Am. Dec. 538.

[15] Commonwealth *v.* Acker, 197 Mass. 91, 83 N. E. 312. The Virginia statute on this subject is a very exhaustive one, and one which probably more nearly approaches an adequate remedy than any other. But notwithstanding this, since the statute does not in terms deprive equity of jurisdiction, a court of equity would still have concurrent jurisdiction with the law court. Va. Code, 1919, § 1936 provides that a parent who shall desert or willfully neglect to provide for the support of his or her children under the age of sixteen shall be guilty of a misdemeanor, punishable by a fine not exceeding $500, or in the case of a father, be sentenced to the State convict road force at hard labor for a term not exceeding twelve months, or both, or in lieu of such fine being imposed, he or she may be required to suffer a forfeiture of not over $500 to be paid to the child.

Id., § 1937 provides that the proceedings may be commenced by the child or by any other person having knowledge of the facts.

Id., § 1939 provides that the judge may in his discretion make an order, which shall be subject to change by the court at any time, directing that a certain sum be paid periodically to the child.

ment.[16] Thus a parent, who has been once convicted, may continue to neglect his children with impunity. It is obvious that this remedy is wholly inadequate for the purpose of compelling the father to perform his legal duty.[17] It accomplishes nothing for the child, as the placing of parents in jail or the imposing of a fine does not feed the hungry or clothe the naked. The remedy, to be adequate, must be co-extensive with the right; without the remedy, there is no right. For the violation or vindication of every legal right, there must be a remedy. Right and remedy are reciprocal; to deny the remedy is, in substance, to deny the right.[18]

As a general proposition, it is contrary to public policy for courts to take cognizance of controversies involving a personal element between a child and its parent. Such disputes, it is said, are best settled on their own hearth-stone, as otherwise they would tend to disrupt the relation which should exist between them.[19] It is not the purpose of this note to question the magnanimity of such a principle. But a distinction, it seems, should be drawn between actions to redress a personal wrong and actions to enforce a legal duty. When a parent abandons his child, he is not inflicting a personal wrong on the child, in the strictest sense of the word, but he is violating a status or contract relation. By his bringing the child into the world, a status is created which imposes a legal duty of support upon the parent. It is analogous in this respect to the status created by a marriage. An infant should have the same right to sue for a violation of the status of parent and child that a wife has to sue for a violation of the status of husband and wife, at least where the wife is asking the court for support only, and not for a divorce. It is a settled principle that a wife has the right to sue her husband in equity for support

[16] Gay *v.* State, 105 Ga. 599, 31 S. E. 569, 70 Am. St. Rep. 68.

[17] Quoting again from Judge Ethridge's dissenting opinion: "The state will not rely entirely upon criminal law for the protection of children from neglect and maltreatment by parents for several reasons: First, it is wholly inadequate for that purpose. The children are under the control and restraint of the parents, and have not sufficient intelligence and opportunity to set the criminal law in motion or to attend and prosecute. It is contrary to human nature for them to want to prosecute. It accomplishes nothing for the child, as the placing of parents in jail does not clothe the body, nor satiate the pangs of hunger, nor nourish the body. It does not protect the body from the bleak bites of the wintry winds, nor stay the pangs of starvation. If the parent has to pay a fine, his ability is diminished to that extent. If he is placed in jail, he is not personally able to look after his children, and in either event his resentment is aroused and his anger is enkindled, and the child will suffer more, instead of less, by trying such remedies. If the remedy at law is inadequate, equity ought to take jurisdiction, and it is one of the maxims both of the common law and of the equity court that no wrong will be allowed without a remedy."

[18] See 1 CORPUS JURIS 985.

[19] Foley *v.* Foley, 61 Ill. App. 577; Roller *v.* Roller, 37 Wash. 242 79 Pac. 788; McKelvey *v.* McKelvey, 111 Tenn. 388, 77 S. W. 664.

without at the same time asking for a divorce or separation.[20] The same public policy is contravened in a suit of that character as would be contravened if an infant were allowed to sue its parent, and yet the courts recognize the wife's right and permit her to sue. The chief reason advanced why such suits are contrary to public policy is that they tend to destroy the relation which should exist between parent and child. But where this relation has already ceased to exist, as it has when the parent abandons his child, the reason for the rule does not apply. It would rather seem to be the dictate of public policy to recreate this relation as far as is possible by compelling the parent to support the child. If the boast of equity be true, that it looks to the real facts of the case and renders a decree in accordance with justice, despite narrow legal rules, it should not refuse to entertain the suit of an abandoned child against its parent for maintenance.[21] In the progress of society, the arbitrary fictions and rigid technicalities of the law must gradually give way to the equitable principles of humanity and conscience.[22]

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[20] Garland *v.* Garland, 50 Miss. 694; Almond *v.* Almond, 4 Rand. (Va.) 662, 15 Am. Dec. 781.

[21] LILE, NOTES ON EQUITY JURISPRUDENCE, p. 10.

[22] In his dissenting opinion in Rawlings *v.* Rawlings, *supra,* Judge Ethridge said: "I cannot concur in the holding that the repose of society would be adversely affected by maintaining the suit in the present case. Any society that can consent to see children neglected by able parents, and whose repose would not be more disturbed by seeing children starved, maimed, and brutally handled, than it would be by seeing the law make the parent fulfill his duties and obligations to his child, at the suit of the child, ought not to be tolerated at all. What philosophy is this, now promulgated, which says that suits in chancery will disturb society when criminal prosecutons of parents by children will not disturb it? What kind of society is it that will be more disturbed by a suit in equity than it will be when the helpless children are allowed to go hungry and unclothed, their vitality so lowered by starvation and exposure as to make them invalids, unable to perform the functions of citizenship, but, on the contrary, make them a burden, and perhaps a menace, to society? If there be such society in existence, it ought to be kicked off the earth, and forced to do its reposing in the abysmal pits of Gehenna, where children do not go."